IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8930 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FARIDMINYA HUSENMINYA SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 8930 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Ahmedabad city on 9.6.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as 'bootlegger'.

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon the fact of registration of crimes against the petitioner on 3.3.2003 under sec. 66(1)(B), 65(A)(E), 81, 83 and 116(1)(B) of the Bombay Prohibition Act, whereby it is alleged that foreign liquor worth of Rs. 29,300/- was found from the petitioner. In addition to this, the detaining authority also relied upon two in-camera statements as recorded by the sponsoring authority on 7.6.2003 and 8.6.2003 and verified by the detaining authority on 9.6.2003 revealing unreported incidents occurred on 10.5.2003 and 30.5.2003. From the above material, the detaining authority passed the above said order of detention.

Ld. advocate Mr. Kamen Shukla for Mr AS Dave for the petitioner and ld. AGP Mr RM Chauhan for the respondents were heard at length. The affidavit in reply filed by the detaining authority as placed on record, is also taken into consideration.

Out of various grounds raised on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, it appears that this matter can be considered and decided on sole ground whether the order is bad in law on account of non-application of mind by the detaining authority while passing the order of detention. Undisputedly, the grounds served upon the petitioner revealed that the petitioner was on police remand when order came to be passed and served upon the petitioner. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was on police remand but within limits of time specified, the petitioner was to surrender in the judicial custody and on so surrendering, he was likely to move an application for bail and was likely to be released on bail by the court. It was also further observed in the grounds that on so releasing on bail, the petitioner was likely to indulge in illegal activities and, therefore, according to the detaining authority, the activities of the petitioner being prejudicial to the maintenance of public order, the petitioner was required to be detained under the PASA Act. In respect of this subjective satisfaction arrived at by the detaining authority, it can be said that the detaining authority is

empowered to pass an order of detention even if the petitioner is in judicial custody but the law requires that the detaining authority should reach to that subjective satisfaction on cogent material. If that is not so, than the order becomes bad in law. On going through the grounds placed on record, it clearly transpires that there was no material before the detaining authority to reach to the subjective satisfaction that on police remand period being over, and on surrendering to the judicial custody, the petitioner was likely to move bail application and was likely to be released on bail. This subjective satisfaction, therefore, based on no material. The facts of this case, therefore, are fully covered by a decision of the Apex Court in the matter of Amrutlal and others vs. Union Government, though Secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. Consequently, the order impugned must becomes bad in law and required to be quashed and set aside on the ground that the subjective satisfaction arrived at by the detaining authority is based on no material on vital aspect of the matter.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 11.6.2003 by the Police Commissioner, Ahmedabad city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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